

FCC MAIL SECTION

Federal Communications Commission

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 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	WT Docket. No. 97-153
Amendments to Part 90 of the)	RM-8584
Commission's Rules Concerning)	RM-8623
Private Land Mobile Radio Services)	RM-8680
)	RM-8734

NOTICE OF PROPOSED RULE MAKING

Adopted: July 2, 1997

Released: August 25, 1997

Comments date: October 3, 1997

Reply comments date: October 17, 1997

By the Commission:

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In response to four petitions for rule making, in this *Notice of Proposed Rule Making* ("Notice"), we propose amendments to Part 90 of our rules concerning the Private Land Mobile Radio ("PLMR") Services.¹ Our proposals concern: (1) the elimination of frequency coordination requirements for five low power frequencies in the Business Radio Service;² (2) the transmission of safety alerting and traffic light control signals in the 24.05-24.25 GHz band in the

¹ 47 C.F.R. Part 90. NOTE: On February 20, 1997, the Commission adopted a consolidation plan for the Part 90 PLMR Services below 800 MHz. This action consolidates the twenty existing PLMR services into two pools, a Public Safety Pool and an Industrial/Business Pool, and deletes the names of the individual PLMR services. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Report and Order*, PR Docket No. 92-235, FCC 97-61, (released March 12, 1997), ("Consolidation Order"). Because the rules in the *Consolidation Order* do not become effective until October 17, 1997, this *Notice* refers to rules and radio service names currently in effect. Any rules adopted in this proceeding will reflect the appropriate pool designation.

² RM-8623.

Radiolocation Service;³ and (3) construction requirements for private, non-Specialized Mobile Radio (non-SMR) systems operating in the 800 and 900 MHz bands.⁴ We believe that these proposed changes will reduce the regulatory burden on licensees, and will promote more efficient and flexible use of the frequency spectrum by encouraging growth of PLMR systems. We decline: (1) to change the mobile loading and reporting requirements for 800 and 900 MHz non-SMR systems; and (2) to consider a suggestion contained in a fourth petition for rulemaking to amend our Part 90 and Part 13 rules⁵ to establish a PLMR Services Radio Maintainers License, and to require persons installing and servicing land mobile radio equipment to have such a license.⁶ Additionally, we request comments on potential interference problems resulting from shared use of the 216-217 MHz band under Parts 90 and 95 of the Rules.

II. DISCUSSION

RM-8623 - Frequency Coordination for 154.570 MHz and 154.600 MHz

2. *Background.* On February 10, 1995, the Council of Independent Communications Suppliers ("CICS") filed a petition for rule making ("CICS Petition") requesting that 154.570 MHz and 154.600 MHz be exempt from the frequency coordination requirement.⁷ CICS is an association of entities serving the needs of private land mobile radio eligibles, particularly those located in small and rural communities. The CICS membership includes SMR operators, radio dealers, equipment suppliers, communications engineers and consultants. CICS is an independent market council of the Industrial Telecommunications Association ("ITA"). The CICS Petition was placed on Public Notice, Report No. 2064 (March 29, 1995).

3. Pursuant to 47 C.F.R. §§ 90.75(b) and 90.67(b), 154.570 MHz and 154.600 MHz are available for primary use in the Business Radio Service and for secondary use in the Forest Products Radio Service with transmitter power limit of two watts. Additionally, pursuant to 47 C.F.R. § 90.175(a), both frequencies require frequency coordination before an application for a station license can be filed with the Commission. CICS requests that we amend Section 90.175(f) of our rules, 47 C.F.R. § 90.175(f), to include a statement that the two frequencies are exempt from frequency coordination. CICS argues that the two-watt power limitation minimizes the potential for co-channel interference.⁸ CICS further argues that because stations licensed on these frequencies are mobile, frequency coordination does not provide any benefit, nor does it

³ RM-8734.

⁴ RM-8584.

⁵ 47 C.F.R. Parts 13 and 90.

⁶ RM-8680.

⁷ CICS Petition at 1.

⁸ *Id.* at 2.

assist in the spectrum management process.⁹ Comments on the CICS Petition were filed by Forest Industries Telecommunications ("FIT"), and the Personal Communications Industry Association ("PCIA"). Reply Comments were filed by CICS.

4. FIT and PCIA oppose the CICS Petition, stating that it is premature because the 150-174 MHz band is subject to proposed re-channelization in the Refarming proceeding, and that no action should be taken regarding the two frequencies until a decision is reached in that proceeding.¹⁰ FIT also argues that grant of the CICS Petition would adversely affect quality control of hundreds of thousands of land mobile applications filed every year with the Commission. FIT maintains that frequency coordinators now check applications for these two frequencies for accuracy, and if coordination were not required, applicants could submit inaccurate applications to the Commission.¹¹ FIT further argues that because these frequencies are used for remote signaling in forestry logging operations, elimination of frequency coordination could adversely affect the safety of loggers.¹² PCIA opposes the elimination of frequency coordination for these frequencies on the basis that: (1) coordination reduces the incidence of co-channel interference in the Business Radio Service; (2) the licensing process is faster and more efficient because the coordinator corrects application errors before the application is sent to the Commission; and (3) the applicant can begin operation immediately after receiving frequency coordination, rather than having to wait until the Commission grants the application.¹³

5. *Discussion.* We note, as an initial matter, that the frequencies which are the subject of the CICS Petition, (i.e., 154.570 MHz and 154.600 MHz) are commonly called "color dot" frequencies in the private land mobile community.¹⁴ Manufacturers generally use these frequencies in low power, low-cost, entry-level, hand-held radios. In the *Refarming Proceeding*, our decision in the *Report and Order* reduced channel bandwidth and spacing for frequencies in the 150-174 MHz band.¹⁵ However, 154.570 MHz and 154.600 MHz were made exempt from the narrower bandwidth requirement because we agreed with the comments that indicated that

⁹ *Id.* at 2-3. Licenses granted for mobile operations do not contain any fixed station coordinates because the location of mobile stations generally is not fixed.

¹⁰ Comments of FIT at 2 and PCIA at 2. See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Notice of Proposed Rule Making*, PR Docket No. 92-235, 7 FCC Rcd 8105 (1992) ("*Refarming proceeding*").

¹¹ Comments of FIT at 2-4.

¹² *Id.* at 4-6.

¹³ Comments of PCIA at 1-3.

¹⁴ Manufacturers have arbitrarily established the designation "Blue dot" for 154.570 MHz and "Green dot" for 154.600 MHz.

¹⁵ Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Report and Order*, PR Docket No. 92-235, 10 FCC Rcd 10076 (1995) ("*Refarming R & O*").

there should be entry-level, economical, hand-held radio equipment made available to licensees who have no need for more sophisticated and expensive narrowband radios.¹⁶

6. All licenses for 154.570 MHz and 154.600 MHz are granted for mobile operations and do not contain station coordinates. We believe, therefore, that frequency coordination for these frequencies no longer serves a regulatory purpose, particularly given that the coordinator does not know the precise location of the user. We also agree with CICS that frequency coordination does not serve its main purpose here, *i.e.*, providing protection from interference, as PCIA suggests, when stations using the frequencies are mobile stations.¹⁷ FIT maintains that coordination of these frequencies is necessary in the logging industry. We note, however, that use of these frequencies is currently on a secondary basis in the Forest Products Radio Service (FPRS). Secondary operations may receive and must accept interference from stations that have primary status. While FIT currently coordinates these frequencies in the FPRS, it has no control over their use by primary users in the Business Radio Service.¹⁸ We conclude that coordination is not necessary for 154.570 MHz and 154.600 MHz and that removal of the frequency coordination requirement for these frequencies is consistent with the Commission's goal to remove unnecessary regulations.¹⁹

7. In the *Refarming R & O*, three additional 150 MHz frequencies were created in the Business Radio Service for low power use.²⁰ Because these frequencies will be used in a manner similar to 154.570 MHz and 154.600 MHz, we see no merit in imposing a frequency coordination requirement upon applicants for these frequencies. We propose, therefore, to exempt the frequencies 154.570 MHz, 154.600 MHz, 151.820 MHz, 151.880 MHz, and 151.940 MHz from the requirements for frequency coordination. We believe this action will further the public interest because it will reduce the regulatory burdens and eliminate coordination costs for applicants for these Business Radio Service frequencies. We seek comment on this proposal.

¹⁶ *Id.* at 10123.

¹⁷ Reply Statement of CICS at 4.

¹⁸ When effective, the *Consolidation Order* will make 154.570 MHz and 154.600 MHz available to all eligibles in the Industrial/Business Pool for use on an equal basis.

¹⁹ For example, in May 1996, the Commission revised its procedures for registering antenna structures. Rather than each station applicant having to file antenna structure clearance information, only the tower owner will be required to register with the Commission. This will result in the number of entities in the "clearance" process from 900,000 licensees to 75,000 owners. See Wireless Telecommunications Bureau Fact Sheet, *Antenna Structure Registration*, PR 5000, Number 15, dated May 1996.

²⁰ The frequencies are 151.820 MHz, 151.880 MHz, and 151.940 MHz. These three frequencies are limited to a channel bandwidth of 12.5 kHz and a power output of one watt. See *Refarming R&O*, 10 FCC Rcd at 10123. When effective, the *Consolidation Order* will make these frequencies available for use by all eligibles in the Industrial /Business Pool.

RM-8734 - Safety Alerting Signals at 24 GHz

8. *Background.* On October 24, 1995, the Radio Association Defending Airwave Rights ("RADAR") filed a petition for rule making ("RADAR Petition") requesting amendment of Part 90 of our rules to permit the use and operation of a Radar Traffic Safety Warning System (Warning System). RADAR, a non-profit association which represents manufacturers, distributors, and users of radar and laser detectors, requests that the Commission permit 24.10 GHz, a frequency in the 24.05-24.25 GHz band,²¹ to be used for the transmission of safety alerting signals to be received by a motorist's radar detector.²² The RADAR Petition was placed on Public Notice, Report No. 2116 (December 13, 1995). Comments on the RADAR Petition were filed by RADAR, Applied Concepts, Inc. ("Applied"), Sanyo Technica USA, Inc. ("Sanyo"), Georgia Tech Research Institute ("Georgia Tech"), Uniden America Corporation ("Uniden"), and Whistler Corporation ("Whistler"). Reply comments were filed by RADAR and Cobra Electronics Corporation ("Cobra"). The comments unanimously support the RADAR Petition. Although supporting the RADAR Petition, Cobra and Applied expressed some concern about potential interference and suggested that further investigations be made before any action is taken by the Commission. In reply to this concern, RADAR submitted Supplementary Comments that included a technical analysis and testing results indicating that such interference is not a problem. Also, in a letter to Chairman Reed E. Hundt, dated January 11, 1996, Senator Judd Gregg expressed his support for the RADAR Petition.

9. Under our current rules, frequencies in the 24.05-24.25 GHz band may be used only for the purpose of determining direction, distance, speed, or position for purposes other than navigation.²³ Because this frequency currently may not be used for the purpose that RADAR requests, the RADAR Petition asks that 47 C.F.R. § 90.103(c)(22) be amended to permit the use of 24.10 GHz for the transmission of a signal (NON emission) to activate a motorist's radar detector along with an ancillary FM signal necessary for the Warning System to alert the motorist to various hazardous driving situations. The RADAR Petition also requests rule changes to permit licensees in the Local Government, Police, Fire, Highway Maintenance, and Forestry-Conservation Radio Services to use such transmitters on a secondary basis and without additional authorization from the Commission.²⁴

10. There has been much interest shown over the years in radio systems that alert motorists to the presence of hazardous conditions or of a nearby emergency vehicle on a dispatched assignment. Currently, pursuant to 47 C.F.R. § 90.242, local governments may use fixed Travelers' Information Station transmitters, operating in the AM broadcast band, to transmit

²¹ The 24.05-24.25 GHz band is allocated to the Radiolocation Service, 47 C.F.R. § 90.103, is shared with, and is secondary to, the Government Radiolocation Service. The RADAR Petition has been coordinated with the Government through the Interdepartment Radio Advisory Committee.

²² RADAR Petition at 5.

²³ See 47 C.F.R. §§ 90.101, and 90.103.

²⁴ When effective, the *Consolidation Order* places all these radio services in a single Public Safety Pool.

messages of interest to motorists. Additionally, 47 C.F.R. § 95.418 permits Citizens Band radios to be used to transmit communications concerning highway conditions to assist travelers. As RADAR envisions the Warning System, local government authorities would install specifically designed transmitters operating on 24.10 GHz near highway construction areas, bridges under repair, flooded areas, railroad crossings, and other potentially hazardous areas. Transmitters also could be installed in emergency vehicles (*e.g.*, ambulances, police and fire vehicles, *etc.*). These transmitters would send a signal that would both activate a motorist's radar detector and alert the motorist to various specific hazardous driving conditions and the nearby presence of an emergency vehicle.²⁵

11. *Discussion.* We agree with RADAR that allowing operation of a Warning System at 24.10 GHz would benefit the public interest by increasing traffic safety for both motorists and drivers of emergency vehicles. It would provide Public Safety licensees with increased flexibility and would provide local governments with another means of alerting motorists to hazardous driving conditions. Additionally, because we believe that this concept would benefit licensees in other radio services that also use ambulances and other emergency vehicles, we propose to expand the eligibility for use of 24.10 GHz to licensees in the Emergency Medical and Special Emergency Radio Services for this specific purpose. Therefore, we propose to amend our rules to permit licensees in the Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, Emergency Medical, and Special Emergency Radio Services²⁶ to use, on a secondary basis and without additional authorization from the Commission, 24.10 GHz to transmit safety alerting signals.²⁷

12. Over time, we have also received numerous informal inquiries concerning the use of Radiolocation Service frequencies in public safety emergency vehicles to control traffic lights to facilitate a "clear route" for a vehicle on an emergency run or to activate a flashing (strobe) light located on the traffic signal to warn motorists of the presence of an emergency vehicle in the vicinity of the traffic signal. Similarly, these systems could not be implemented using Radiolocation Service frequencies because of rule limitations. Because we believe that such traffic light control systems would be beneficial to both motorists and drivers of emergency vehicles, we also propose to permit, on a secondary basis and without additional authorization from the Commission, the use of Radiolocation Service frequencies in the 24.20-24.25 GHz portion of the 24.05-24.25 GHz band by licensees in the Public Safety, Emergency Medical, and Special Emergency Radio Services²⁸ for traffic signal control purposes. We request specific comment on these proposals, as well as comments on other potential uses that would increase the flexibility of Radiolocation Service frequencies, and any amendments to our current technical rules that would be required in order to facilitate such uses.

²⁵ RADAR Petition at 4-5.

²⁶ When effective, the *Consolidation Order* places all these radio services in a single Public Safety Pool.

²⁷ This type of authorization would be the same as now provided to public safety entities for use of traffic radar guns. See 47 C.F.R. §§ 90.17(e)(4), 90.19(g)(6), 90.21(e)(4), 90.23(e)(3), and 90.25(e)(3).

²⁸ When effective, the *Consolidation Order* places all these radio services in a single Public Safety Pool.

RM-8584 - 800 and 900 MHz Loading, Reporting, and Construction Requirements*Background*

13. On December 20, 1994, the Alliance of Private 800/900 MHz Licensees ("APEL") filed a petition ("APEL Petition") requesting amendments to 47 C.F.R. Part 90, Subpart S. The APEL Petition seeks relaxation of the mobile loading, reporting, and construction requirements currently applicable to private (non-SMR) systems operating in the 800 and 900 MHz bands.²⁹ Membership of APEL consists of representatives from a number of Fortune 500 companies and other prominent corporations including: Airborne Express, All American Pipeline Company, Bell Communications Research, BellSouth Telecommunications, The Boeing Company, Exxon Communications Services Company, Ford Communications, Inc., Kerr-McGee Corporation, Pacific Bell, and Phillips Petroleum Company. The APEL Petition was placed on Public Notice, Report No. 2054 (January 24, 1995). Comments on the APEL Petition were filed by the E.F. Johnson Company ("E.F. Johnson"), the Personal Communications Industry Association ("PCIA"), the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and EDS Corporation ("EDS"). Most comments express support for the APEL Petition. E.F. Johnson states that the rule changes proposed by APEL would support the Commission's recent efforts to streamline and improve consistency of the PLMR Services rules.³⁰ PCIA agrees with APEL that the mobile loading rule should apply equally to all 800 and 900 MHz systems.³¹ EDS states that each of APEL's proposals would grant private, internal-use licensees additional flexibility without compromising the Commission's regulatory goals.³² APCO expresses limited opposition, arguing that a relaxation of loading standards would lead to further speculation and hoarding of scarce radio frequencies.³³

Discussion

14. *Mobile loading requirements.* APEL states that prior to 1988, the rationale for Commission-mandated loading requirements was to ensure that 800 and 900 MHz channels were fully utilized. APEL contends that subsequent Commission actions modifying mobile loading in the 800 and 900 MHz bands makes the rationale for a loading requirement no longer applicable.³⁴ Specifically, APEL cites the Commission's action in 1988 phasing out the use of

²⁹ The requested rule changes are to 47 C.F.R. §§ 90.631, 90.633, 90.651, and 90.658.

³⁰ Comments of E. F. Johnson at 3.

³¹ Comments of PCIA at 2.

³² Comments of EDS at 3.

³³ Comments of APCO at 2.

³⁴ APEL Petition at 3-4.

mobile loading standards as a device for recovering channels that were not fully loaded.³⁵ APEL states that this proceeding exempted all 800 and 900 MHz systems licensed after June 1, 1993, from mobile loading requirements. APEL further cites the Commission's action in 1994 that exempted all SMR systems licensed before June 1, 1993, from similar requirements.³⁶ The Commission stated that although loading served a significant regulatory purpose during the initial development of the SMR industry by preventing the warehousing of spectrum, future SMR licensing will largely be based upon auction of channel blocks. The Commission also ruled that where SMRs continue to be licensed on a channel-by-channel basis, licensees will be required to complete construction and commence service before additional channels can be sought.

15. APEL states that after the above-mentioned Commission actions, the mobile loading rules now apply only to industrial, business, public safety, and land transportation systems that were licensed before June 1, 1993, and that are still within their initial license term. APEL asserts that it is now appropriate to cease applying loading requirements to non-SMR systems that were licensed prior to June 1, 1993.³⁷

16. We disagree. Section 90.631(b) of our rules, 47 C.F.R. §90.631(b), states that non-SMR trunked system licensees initially authorized before June 1, 1993, and that are within their original license term, are subject to the loading requirements provided in Section 90.631(a) of our rules. However, pursuant to Section 90.631(b) of our rules, after the expiration of their five-year license term, upon license renewal, these licensees would be exempt from the loading requirements.³⁸ Relatively few systems would be affected by APEL's suggested rule change and only a short period of time would separate the effective date of this change and the elimination of loading requirements under current rules. While we agree that the rationale for the loading requirements is no longer applicable, circumstances make its elimination impractical at this point. We decline to propose any rule changes concerning the elimination of mobile loading for 800 and 900 MHz non-SMR systems.

17. *Reporting requirements.* Section 90.651(b) of our rules requires each licensee of a trunked, non-SMR system licensed at 800 and 900 MHz to file an annual report regarding the number of mobile units served on its system. A similar report is due when a licensee files an

³⁵ See Amendment of Part 90, Subparts M and S, of the Commission's Rules, PR Docket No. 86-404, *Report and Order*, 3 FCC Rcd 1838, 1845-6 (1988) (*M&S Docket*).

³⁶ See Implementation of Sections 3(n) and 332 of the Communications Act, GEN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 8082 (1994).

³⁷ APEL Petition at 4.

³⁸ In the *M&S Docket*, we stated that we are phasing out the channel recovery program based on loading standards and will rely on marketplace transactions to reallocate underutilized channels. We also provided a transition period until June 1, 1998, to allow for business planning and to avoid any shock to the marketplace that an abrupt change might produce. See *M&S Docket*, 3 FCC Rcd 1846 (1988).

application to renew the station license.³⁹ APEL contends that if the mobile loading requirements are phased out, these reports would not serve a valid purpose, and requests that the Commission eliminate the reporting requirement. Because we are not amending the soon-to-expire loading requirement, we are retaining the associated reporting requirement. We believe that this reporting requirement places an insignificant burden on a licensee. Further, as with the loading requirement, the reporting requirement will be terminated on June 1, 1998.

18. *Construction periods.* APEL also requests that we conform the construction periods for all trunked and conventional systems.⁴⁰ APEL states that changes in the regulatory treatment of conventional systems from private systems to Commercial Mobile Radio Service systems has reduced the need to require prompt build out of systems that will be devoted to internal communications. APEL also claims that its requested change will reduce the number of requests the Commission receives for extension of the construction period, and will simplify regulatory requirements for conventional and trunked system licensees.⁴¹ The construction period requirements of eight months for conventional systems and twelve months for trunked systems were codified in Docket No. 18262.⁴² To foster consistency in our rules, as well as to reduce the burden on both the Commission and licensees, we tentatively conclude that there is merit in conforming the construction period requirements for all 800 and 900 MHz systems. We note that Section 90.167(a) currently specifies that SMR systems -- conventional and trunked -- are permitted a 12-month period to commence service.⁴³ We propose, therefore, to amend Section 90.633 of our rules to allow a one-year construction period for all 800 and 900 MHz conventional systems. We seek comment on our tentative conclusion and proposal.

RM-8680 - Licensing of Radio Service Technicians

19. *Background.* On March 25, 1994, the Industrial Telecommunications Association, Inc. ("ITA") and CICS jointly filed a Petition for Rule Making ("ITA/CICS Petition") requesting that we amend: (1) our Part 13 Commercial Radio Operators rules⁴⁴ to establish a new class of license designated as the PLMR Services Radio Maintainers License; and (2) our Part 90 PLMR

³⁹ 47 C.F.R. § 90.651(b).

⁴⁰ APEL Petition at 6. Section 90.631(e) of our rules requires that a trunked system be constructed within twelve months, and Section 90.633(c) requires that a conventional system be placed in operation within eight months of the license grant. 47 C.F.R. §§ 90.631(e) and 90.633(c).

⁴¹ *Id.* at 7.

⁴² See An Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz; and Amendment of Parts 2, 18, 21, 73, 74, 89, 91, and 93 of the Rules Relative to Operations in the Land Mobile Services between 806 and 960 MHz, Docket 18262, *Second Report and Order*, 46 FCC 2d 795 (1974).

⁴³ 47 C.F.R. § 90.167(a).

⁴⁴ 47 C.F.R. Part 13.

Services rules⁴⁵ to require persons installing and servicing land mobile radio facilities to have such a license.⁴⁶ ITA is an association with a membership of 8,600 licensed private land mobile radio users and thirteen trade associations. ITA is also a Commission-certified frequency coordinator. CICS is an association representing private land mobile radio eligibles.⁴⁷ The ITA/CICS Petition was placed on Public Notice, Report No. 2090 (August 11, 1995). Comments were filed by Lockard and White, Inc., R.W. Brown Electronics, Inc., and Dennis C. Brown and Robert H. Schwaninger, Jr. Written *ex parte* Reply Comments were filed by the Region-20 Legislative/Regulatory Affairs Committee.

20. ITA and CICS contend that since the Commission eliminated the requirement that land mobile technicians be licensed,⁴⁸ the number of unlicensed transmitters operating on land mobile frequencies has significantly increased. ITA and CICS argue that this increase is a result of the increasing failure of installation and repair personnel to inform users of land mobile radios that they are required to obtain a station license from the Commission.⁴⁹ ITA and CICS also contend that if the Commission makes licensing mandatory for all individuals who install or service land mobile radio equipment, those individuals will have a license to "protect" and, therefore, will have a strong incentive to apprise customers of our licensing requirements.⁵⁰

21. *Discussion.* As stated in the ITA/CICS Petition,⁵¹ the Commission eliminated the licensing requirement for individuals installing and maintaining Part 90 land mobile radio stations for three reasons: (1) to conserve the limited funding available for the license application procedures including the license examination program; (2) to eliminate the requirement that the Commission update the examinations periodically to reflect technological advancements; and that (3) privately implemented industry technician certification programs could accomplish the same goals as a Commission licensing requirement.⁵²

22. We do not agree that there is a direct relationship between an individual having or not having a Commission-issued operators license and the amount of unlicensed station operation in the PLMR Services. In this connection, we reiterate that the responsibility for compliance with our licensing requirements and our rules lies with the person or entity using the radio channels,

⁴⁵ 47 C.F.R. Part 90.

⁴⁶ ITA/CICS Petition at 1.

⁴⁷ See ¶ 2 *supra*.

⁴⁸ See Requirement for Licensed Operators in Various Radio Services, Gen. Docket No. 83-222, *Report and Order*, 96 FCC 2d 1123 (1984) (*Licensed Operators R&O*).

⁴⁹ ITA/CICS Petition at 3-4.

⁵⁰ *Id.* at iii.

⁵¹ *Id.* at 3.

⁵² See *Licensed Operators R&O*, 96 FCC 2d at 1139-1143.

not the technician that installed an unlicensed station.⁵³ We conclude that the amendments requested by the ITA/CICS Petition would have minimal, if any, impact on the number of unlicensed stations transmitting on land mobile channels. Also, as stated above, the primary reasons for the elimination of the technician licensing program as given in Gen. Docket No. 83-222 have not changed. We, therefore, decline to propose specific rules for reinstating an operator licensing requirement.

Shared Use of the 216-217 MHz Band

23. Under Section 90.259 of our rules 216-220 MHz is available to eligibles in seven PLMR services for telemetry communications on a secondary, non-interference basis.⁵⁴ Station technical parameters for operating in this band are reviewed and specified by the Commission for each license granted. To date, the typical uses of telemetry communications have included geological sensing, oil and gas pipeline data collection, and performance testing of vehicles in various climates.

24. In WT Docket No. 95-56 we created a new Low Power Radio Service (LPRS) that operates in the 216-217 MHz band on a secondary, non-interference basis, and is limited to the following types of communications: auditory assistance, health care assistance, law enforcement tracking, and Automated Maritime Telecommunications System (AMTS) point-to-point communications.⁵⁵ In creating the LPRS, we anticipated that a majority of these devices would be used in metropolitan areas in schools, hospitals, and public gathering places, by students and by persons with disabilities and illnesses.

25. Currently LPRS and telemetry communications can flourish in the 216-217 MHz band on a secondary, non-interference basis, because the transmitters are generally used in distinct geographic areas. Additionally, LPRS transmitters may be capable of switching to a different frequency in case another transmitter is nearby.⁵⁶ Telemetry transmitters are currently used for geological sensing and oil and gas pipeline data collection in remote locations while telemetry transmitters used in the performance testing of vehicles operate for brief periods in widely varying areas. While there are relatively few licensees presently using this band for telemetry services (in fact, most services are provided in remote locations), we note that the nature of telemetry communications needs could change over time with telemetry and LPRS transmitters

⁵³ See 47 U.S.C. § 301.

⁵⁴ Use of the 216-220 MHz band is currently permitted in the Power, Petroleum, Forest Products, Special Industrial, Business, Manufacturers, and Telephone Maintenance Radio Services. When effective, the *Consolidation Order* makes frequencies in this band available to all eligibles in the Industrial/Business Pool. Operation is secondary to Federal Government and maritime mobile use. See 47 C.F.R. § 90.259.

⁵⁵ See Amendment of the Commission's Rules Concerning Low Power Radio and Automated Maritime Telecommunications System Operations in the 216-217 MHz Band, WT Docket No. 95-56, *Report and Order*, 11 FCC Rcd 18517 (1996).

⁵⁶ *Id.* at 19531.

operating in close proximity. Because our LPRS rules specify and limit the types of permissible communications, we do not anticipate a change in the locations or frequency of use of LPRS transmitters in the near future.⁵⁷ For example, auditory assistance and health care LPRS devices may be used at schools and hospitals, while law enforcement tracking LPRS devices operate infrequently for only a brief period. In contrast, given that "telemetry" is broadly defined under Part 90 of our Rules, we recognize that the locations and frequency of transmissions could change markedly if the needs for telemetry communications should broaden or increase.⁵⁸ For example, an increased use of the 216-217 MHz band for telemetry communications near schools or hospitals could result in harmful interference to auditory assistance devices and radio-based health care devices. Therefore, we seek responses to the following questions to enable us to more accurately identify the potential for future congestion, to initiate a dialogue with the manufacturers and users of these types of devices, and to promote efficient and effective shared use of the 216-217 MHz band by LPRS and telemetry transmitters.

(a) Our licensing database provides us only with general information, such as the name of a telemetry licensee, the geographic location of a telemetry station, and the radio service in which the telemetry licensee is eligible under Part 90. We seek more specific information about the current and future uses of telemetry devices under Part 90 in the 216-217 MHz band. Are the types of uses we have described above in paragraph 23 the most common uses of telemetry? Are there others? Are new uses of telemetry expected in the near future which would likely place telemetry transmitters near schools, hospitals, or other areas where LPRS devices are most likely to be used? Is telemetry more suited for certain types of geographic regions than others? What is the typical length of a telemetry transmission, and how often do these transmissions typically occur? Are telemetry devices generally designed to operate on multiple channels or are they preset to a specific frequency?

(b) What effect, if any, would telemetry and LPRS devices have on one another when located in close proximity?

(c) What measures, if any, should we consider in order to ensure the effective use of the 216-217 MHz band on a shared basis for both telemetry and LPRS devices?

III. CONCLUSION

26. In view of the foregoing, we propose: (1) to delete the frequency coordination requirement for five low power frequencies in the 150-174 MHz band; (2) to permit the use of Radiolocation Service frequencies in the 24.05-24.25 GHz band for highway safety alerting and traffic signal control purposes; and (3) to amend Part 90 of our rules to extend the construction period requirement for non-SMR, 800 and 900 MHz systems from eight to twelve months. The

⁵⁷ 47 C.F.R. § 95.1009.

⁵⁸ Under Part 90 of our Rules, "telemetry" is defined as "[t]he transmission of non-voice signals for the purpose of automatically indicating or recording measurements at a distance from the measuring instrument." 47 C.F.R. § 90.7.

proposed rule changes as described in Appendix B are intended to reduce the regulatory burden for non-commercial private land mobile licensees and increase flexibility in the private land mobile radio services.

IV. PROCEDURAL MATTERS

Ex Parte Rules - Non-Restricted Proceeding

27. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

Regulatory Flexibility Act

28. An Initial Regulatory Flexibility Analysis is contained in Appendix A.

29. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a).

Comment Dates

30. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before **October 3, 1997**, and reply comments on or before **October 17, 1997**. To file formally in this proceeding, you must file an original and five copies of all comments and reply comments. To file informally, you must file an original and one copy of your comments, provided only that the Docket Number is specified in the heading. You should send comments and reply comments to: Office of the Secretary, Federal Communications Commission, Washington, D. C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street N.W., Washington, D.C. 20554.

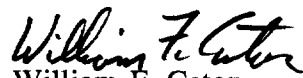
V. ORDERING CLAUSE

31. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(b), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(b) and 303(r), notice is hereby given of proposed amendments to Part 90 of the Commission's Rules, 47 C.F.R. Part 90, in accordance with the proposals, discussions, and statement of issues in this *Notice of Proposed Rule Making*. Rule making petitions RM-8584, RM-8623, RM-8680, and RM-8734 ARE GRANTED to the extent indicated herein, and ARE DENIED in all other respects.

Further Information

32. For further information, contact Gene Thomson, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-0680.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

Attachment: Appendices A and B.

APPENDIX A

Initial Regulatory Flexibility Analysis

1. As required by Section 603 of the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in the *Notice of Proposed Rulemaking*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice of Proposed Rulemaking* provided above in paragraph 30.

I. Need for and Objectives of the Proposed Rules:

2. To reduce regulatory requirements, the Commission proposes to: (1) amend Part 90 of its rules to revise the construction period requirements currently applicable to non-Specialized Mobile Radio, 800 and 900 MHz land mobile radio systems; (2) delete the frequency coordination requirement before a station can be licensed for mobile operation on five low power frequencies in the 150-174 MHz band; and (3) permit the use of frequencies in the Radiolocation Service 24.05-24.25 GHz band for the transmission of alerting signals to warn motorists of hazardous driving conditions and to permit emergency vehicles remote control of traffic signals. Certain proposals allow licensees more time to construct their systems, and other changes promote more flexible use of land mobile spectrum. We believe these changes will encourage growth of land mobile systems and enhance telecommunications offerings for consumers, producers and new entrants.

II. Legal Basis:

3. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply:

4. The proposed rules apply to all businesses and local government entities that operate radio systems for their own internal use in the PLMR services. PLMR systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the Small Business Administration (SBA), each licensee would need to be evaluated within its own business area.

5. We seek comment on the number of small businesses which could be impacted by the proposed rules. We note that the Commission's 1994 Annual Report indicates that at the end of fiscal year 1994 there were approximately 292,000 stations and 5.4 million transmitters operating

in the 800 and 900 MHz and 24 GHz bands.⁵⁹ Further, because any entity engaged in a business activity is eligible to hold a PLMR license, these proposed rules could potentially impact every small business in the U.S.

6. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis.⁶⁰ The definition of a small governmental entity is one with a population of less than 50,000.⁶¹ There are 85,006 governmental entities in the nation.⁶² This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities, and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.⁶³ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600 are small entities that may be affected by our rules.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

7. The proposal to extend the construction period from 8 to 12 months for 800 and 900 MHz non-Specialized Mobile Radio licensees will ease the regulatory burden on these licensees. The proposal to delete frequency coordination for certain frequencies in the 150-174 MHz band will eliminate the frequency coordination fees that applicants were required to pay before receiving a license from the Commission. No new requirements would be imposed as a result of the actions proposed in this rule making proceeding. Thus, costs to prospective applicants for preparation and filing of license applications would be eliminated.

V. Significant Alternatives to Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives:

8. An alternative to our proposed rule to extend the construction period from 8 months to 12 months for 800 and 900 MHz non-SMR licensees would be to permit a longer than 12 month construction period for small entities. We request comments on whether a longer construction period is necessary for small entities or whether the current waiver process is sufficient.

⁵⁹ See Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120-121.

⁶⁰ See 5 U.S.C. § 601(5) (including cities, counties, towns, townships, villages, school districts, or special districts).

⁶¹ *Id.*

⁶² 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

⁶³ *Id.*

VI. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule:

9. None.

APPENDIX B

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90 - PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority citation: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.17 is amended by revising paragraph (e)(4) to read as follows:

§ 90.17 Local Government Radio Service.

* * * * *

(e) * * *

(4) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without additional authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to §§ 90.203(b)(4) and (b)(5) is used, and all other rule provisions are satisfied. A licensee in this service may also operate, subject to all of the foregoing conditions and on a secondary basis, radio units at fixed locations and in emergency vehicles that transmit on the frequency 24.10 GHz, both unmodulated continuous wave radio signals and modulated FM digital signals for the purpose of alerting motorists to hazardous driving conditions or the presence of an emergency vehicle. Unattended and continuous operation of such transmitters will be permitted. Additionally, licensees may utilize type accepted equipment operating in the 24.20-24.25 GHz portion of the 24.05-24.25 GHz band for traffic light control purposes without additional authorization and on a secondary basis.

3. Section 90.19 is amended by revising paragraph (g)(6) to read as follows:

§ 90.19 Police Radio Service.

* * * * *

(g) * * *

(6) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without additional authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to §§

90.203(b)(4) and (b)(5) is used, and all other rule provisions are satisfied. A licensee in this service may also operate, subject to all of the foregoing conditions and on a secondary basis, radio units at fixed locations and in emergency vehicles that transmit on the frequency 24.10 GHz, both unmodulated continuous wave radio signals and modulated FM digital signals for the purpose of alerting motorists to hazardous driving conditions or the presence of an emergency vehicle. Unattended and continuous operation of such transmitters will be permitted. Additionally, licensees may utilize type accepted equipment operating in the 24.20-24.25 GHz portion of the 24.05-24.25 GHz band for traffic light control purposes without additional authorization and on a secondary basis.

4. Section 90.21 is amended by revising paragraph (e)(4) to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(e) * * *

(4) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without additional authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to §§ 90.203(b)(4) and (b)(5) is used, and all other rule provisions are satisfied. A licensee in this service may also operate, subject to all of the foregoing conditions and on a secondary basis, radio units at fixed locations and in emergency vehicles that transmit on the frequency 24.10 GHz, both unmodulated continuous wave radio signals and modulated FM digital signals for the purpose of alerting motorists to hazardous driving conditions or the presence of an emergency vehicle. Unattended and continuous operation of such transmitters will be permitted. Additionally, licensees may utilize type accepted equipment operating in the 24.20-24.25 GHz portion of the 24.05-24.25 GHz band for traffic light control purposes without additional authorization and on a secondary basis.

5. Section 90.23 is amended by revising paragraph (e)(3) to read as follows:

§ 90.23 Highway Maintenance Radio Service.

* * * * *

(e) * * *

(3) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without additional authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to §§ 90.203(b)(4) and (b)(5) is used, and all other rule provisions are satisfied. A licensee in this service may also operate, subject to all of the foregoing conditions and on a secondary basis,

radio units at fixed locations and in emergency vehicles that transmit on the frequency 24.10 GHz, both unmodulated continuous wave radio signals and modulated FM digital signals for the purpose of alerting motorists to hazardous driving conditions or the presence of an emergency vehicle. Unattended and continuous operation of such transmitters will be permitted. Additionally, licensees may utilize type accepted equipment operating in the 24.20-24.25 GHz portion of the 24.05-24.25 GHz band for traffic light control purposes without additional authorization and on a secondary basis.

6. Section 90.25 is amended by revising paragraph (e)(3) to read as follows:

§ 90.25 Forestry-Conservation Radio Service.

* * * * *

(e) * * *

(3) A licensee of a radio station in this service may operate radio units for the purpose of determining distance, direction, speed, or position by means of a radiolocation device on any frequency available for radiolocation purposes without additional authorization from the Commission, provided type accepted equipment or equipment authorized pursuant to §§ 90.203(b)(4) and (b)(5) is used, and all other rule provisions are satisfied. A licensee in this service may also operate, subject to all of the foregoing conditions and on a secondary basis, radio units at fixed locations and in emergency vehicles that transmit on the frequency 24.10 GHz, both unmodulated continuous wave radio signals and modulated FM digital signals for the purpose of alerting motorists to hazardous driving conditions or the presence of an emergency vehicle. Unattended and continuous operation of such transmitters will be permitted. Additionally, licensees may utilize type accepted equipment operating in the 24.20-24.25 GHz portion of the 24.05-24.25 GHz band for traffic light control purposes without additional authorization and on a secondary basis.

7. Section 90.27 is amended by adding paragraph (d) to read as follows:

§ 90.27 Emergency Medical Radio Service.

* * * * *

(d) *Additional frequencies available.* A licensee of a radio station in this service may operate a radio unit in an emergency vehicle without additional authorization from the Commission and on a secondary basis, that transmits on the frequency 24.10 GHz both an unmodulated continuous wave radio signal and a modulated FM digital signal for the purpose of alerting motorists to the presence of the emergency vehicle. Continuous operation of such transmitters will be permitted. Additionally, licensees may utilize equipment operating in the 24.20-24.25 GHz portion of the 24.05-24.25 GHz band for traffic light control purposes without additional authorization and on a secondary basis. The licensee must utilize type accepted equipment or equipment authorized pursuant to §§ 90.203(b)(4) and (b)(5), and satisfy all other rule provisions.

8. Section 90.53 is amended by revising paragraph (c)(2) to read as follows:

§ 90.53 Frequencies available.

* * * * *

(c) * * *

(2) A licensee of a radio station in this service may operate a radio unit in an emergency vehicle without additional authorization from the Commission and on a secondary basis, that transmits on the frequency 24.10 GHz both an unmodulated continuous wave radio signal and a modulated FM digital signal for the purpose of alerting motorists to the presence of the emergency vehicle. Continuous operation of such transmitters will be permitted. Additionally, licensees may utilize equipment operating in the 24.20-24.25 GHz portion of the 24.05-24.25 GHz band for traffic light control purposes without additional authorization and on a secondary basis. The licensee must utilize type accepted equipment or equipment authorized pursuant to §§ 90.203(b)(4) and (b)(5), and satisfy all other rule provisions.

9. Section 90.103 is amended by revising paragraph (c)(22) to read as follows:

§ 90.103 Radiolocation Service.

* * * * *

(c) * * *

(22) For frequencies 2455 MHz, 10,525 MHz, and 24,125 MHz, only unmodulated, continuous wave (NON) emission shall be employed. The frequency 24.10 GHz, and frequencies in the 24.20-24.25 GHz band may use NON emission along with an ancillary FM digital emission. The frequency 24.10 GHz will be used for the purpose of alerting motorists of hazardous driving conditions and the presence of emergency vehicles. Frequencies in the 24.20-24.25 MHz band may be used in emergency vehicles for traffic signal control. Equipment operating on 24.10 GHz or in the 24.20-24.25 GHz band must keep the deviation of the FM digital signal within ± 5 MHz. Equipment operating on these frequencies must have a frequency stability of at least 2000 ppm and are exempt from the requirements of §§ 90.403(c), 90.403(f), and 90.429.

10. Section 90.175 is amended by revising paragraph (f)(5) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(f) * * *

(5) Applications in the Special Industrial Radio Service or the Business Radio Service requesting a frequency designated for itinerant operations, and applications requesting operation

on 154.570 MHz, 154.600 MHz, 151.820 MHz, 151.880 MHz, and 151.940 MHz.

* * * * *

9.. Section 90.633 is amended by revising paragraphs (c) and (d) to read as follows:

§ 90.633 Conventional systems sharing and construction requirements.

* * * * *

(c) Except as provided in Section 90.629, licensees of conventional systems must place their authorized stations in operation not later than one year after the date of grant of the system license.

(d) If a station is not placed in operation within one year, except as provided in Section 90.629, the license cancels automatically. For purposes of this section, a base station is not considered to be in operation unless at least one associated mobile station is also in operation.

10. Section 90.651 is amended by revising paragraph (c) to read as follows:

§ 90.651 Supplemental reports required of licensees authorized under this subpart.

* * * * *

(c) Licensees of conventional systems must report the number of mobile units placed in operation within twelve months of the date of the grant of their license. Such reports shall be filed within 30 days from that date.

* * * * *